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CHAPTER I

G O V E R N M E N T

Government is a most comprehensive term. Politically speaking it involves people to be governed on the one hand and a person or persons to exercise the rule on the other. In other words there must be the governed and the governing authority.

It further involves a State, without which a government is impossible. Apart from the State, government is an anomaly, an effect without a cause. The State is first in order, the government subsequent and consequent and is itself an evidence of the existence of the State. Practically speaking it is one of the tests of Statehood.

State and government though by no means synonymous terms are often confused and the one used when the other is meant. Though practically inseparable they are not identical. The State is the whole - the government is a part or a feature and is the means whereby the sovereign power in the State is exercised. The State is the principal, the government the

agent. The government is made for the State, not the State for the Government. It is because this distinction is not observed that governments sometimes usurp authority and attempt to reverse the natural order. "Whosoever of you will be the chiefest shall be servant of all" describes the right relation between those in authority and those over whom the authority is exercised.

Again the terms State and Sovereignty are not synonymous. Sovereignty is an attribute of the State - not the State itself.

In some States the government and the sovereign power are merged or united in the same person. This is possible in an absolute monarchy. It might be claimed that in such a case there is no government, that the sovereign rules without a government, or on the other hand that the government is the sovereign. But in either case there is Sovereignty and there is government. The fact that both are merged or united in one person does not annihilate either. There will necessa-

rily be some acts distinctly sovereign in their nature, while the rest are governmental merely. Creating the fundamental law is an act of Sovereignty, administering it is an act of Government. The former goes to fundamentals, the latter to incidentals. The former organizes the State, the latter manages its affairs, the former constructs the ship, the latter navigates it.

Perhaps it would be well at this point to define State and Sovereignty.

For the definition of State I know of nothing so good as that suggested by the ripe scholarship of Dr. Folwell, "A community of people within a given territory, politically united for peace, security and the general welfare".

Two views of Sovereignty are possible, the external view and the internal view. Viewed from without the State is sovereign. That is to say, it is free and independent. No power can condition it. From the other standpoint and the one usually occupied when we speak of Sovereignty, it is the supreme power in the State, the original, absolute and final authority.

Where Sovereignty resides and by whom it may be exercised are two questions totally different. It may reside in one person, as in an absolute monarchy, or in several persons, as in an oligarchy, or in the people at large, as in a democracy, and it may or may not be exercised by the person or persons in whom it resides.

Where Sovereignty is to be found depends almost entirely on the quality of the people of the State under consideration. When the people generally are intelligent, educated and united, it is manifestly impossible for one person or a limited number of persons to appropriate to themselves the sovereignty of the State. There can be no question but that power is in the people if they possess intelligence and education, and the sovereignty will nevertheless remain in them notwithstanding that by their authority or permission it may be exercised by another or others. On the other hand, when the people are ignorant, suspicious, superstitious and slavish in their instincts, it is a comparatively easy thing to enslave them, and any people are brought into bondage by so much and to the same extent as they are denied the fullest

and freest liberty.

By liberty I mean the unlimited right to do well and to be free from all restrictions which have not for their object the highest welfare of the individual.

In the last analysis it rests with the people to say whether they will be sovereign or subject. This of course has reference to a single State within itself, free from outside interference. The people of any State may be deprived of independence by superior outside force. The case of Poland is a conspicuous example.

The capacity for government and the recognition of its uses are divinely implanted in the constitution of man. It is as natural for men to recognize the necessity for authority and obedience of the same as it is to possess intelligence and to acquire knowledge. The same instinct or faculty is one of the causes which lead men to believe in the existence of a Supreme Being - one having authority to rule and command and who is to be feared and obeyed.

The authority of a Supreme Being has in all ages been

the model for authority among men, the latter being patterned after the views held of the former. As men have come to believe in a God of Love who desires the welfare of his children, government has come to be acceptable only in proportion as it is exercised for the good of the governed - not, however, necessarily with "the consent of the governed". This condition should not be proposed without qualification. It is proper where the governed are sufficiently intelligent to know what is reasonably best for them, otherwise not.

God rules with the consent of intelligent men - with, not by - and without the consent of the rest. It is proper to say of intelligent and civilized people that they should be governed with their consent, but it is folly to say it of half civilized and savages, and of people who have been prepared neither by tradition nor training for self government. Common sense rejects such a proposition. As well might we make our children of age at ten and impose upon them the duties and responsibilities of maturity. The result is to cheapen the privileges of full manhood in the one case and of full citizenship in the other.

Without doubt the consent of the governed is a necessary ingredient of free government. The former and latter go hand in hand and every people capable of giving consent should be allowed to do so, but a people who lack intelligence and genius or capacity for self government are incapacitated for giving consent and are not entitled to a "free government". A person to give valid consent must fairly understand the nature of the thing consented to. Unless understood no obligation can be legitimately created.

At this point it may be pertinent to observe that participation in government is not an unmixed blessing. The right to a part in the rule carries with it the gravest responsibilities, which it were well for those who seek the right to consider. That no power of government is rightly exercised unless it come "from the consent of the governed" is very well in theory, but it may be otherwise in practice. Better a good government existing without right than a bad government existing with right. The utilitarian side of the question should never be overlooked. No change in an existing order is justifiable except for improvement. Abstract

right should not outweigh beneficial actualities.

The "consent of the governed" is a high sounding phrase often made use of by demagogues. If there is any country where the consent of the governed obtains it is the United States, and yet even with us it is in many instances theoretical only. It cannot be otherwise with a majority rule. Minorities and sometimes even majorities withhold their consent to the existing order. In every election there is a dissenting minority, and through the peculiar workings of the Electoral College there may even be a defeated and dissenting majority. Under this system all that is necessary to elect a President is a majority of a majority.

Thus we see the theory fails in practice and if announced without qualification, describes an impossible condition when viewed from a practical standpoint.

A constructive consent may be claimed. It may be said that if one is dissatisfied he is free to depart for other and more, to him, congenial climes. This remedy is manifest-

ly so impractical that it amounts to nothing. While he can, he will not. The average man is philosophical enough to rather bear the ills he has than fly to others that he knows not of.

The consent of the governed, if it means anything, means the right of revolution, which, if it means anything, means the power to alter the existing government, which is simply to say that power is in the people and that ultimately it rests with them to determine what the government shall be. This is self evident, they have the numbers and their united power is irresistible whether in the realm of the mental or in the domain of the physical, in the exercise of public opinion on the one hand or of brute force on the other.

An enlightened public sentiment is an imperative necessity to a free government. In order to have this, there must be a people reasonably united and homogeneous, capable of unity of purpose, able to reason from cause to effect, possessing in a fair degree judgment and discrimination. It

will not obtain to any great extent in a country where there is great diversity of language and where the people are separated into numerous communities with little intercourse between them. Austria is an example of this.

Public Opinion is a force which even the most tyrannical have been compelled to reckon with. Napoleon himself defined it as "That mysterious power which, while there is nothing more vague, unsteady and capricious, it is impossible to resist".

True government is instituted for the good of man and to secure to him those inalienable rights with which he is endowed by his Creator and which he ought to be permitted to enjoy without interference. It is a divinely appointed means to supply a divinely implanted necessity.

By nature man has an absolutely unlimited right to do well. Good government ^{aims to} guarantees to him this right in substance. It may subject him to some comparatively trifling restrictions as an individual in order that it may return to

him the larger benefits of the good of all.

Government does not, as Blackstone informs us, take away our rights in order that it may return to us "some", but on the contrary it secures to us all our substantial rights and if in minor instances it conditions, it does so in order that it may add to the sum of our liberties much more than it has taken away, so that legitimate government upon the whole not only allows us all the rights we have by nature, but in addition increases and secures them.

As an individual singly, man's rights are absolute and subject to no condition of corresponding duty, but rights which flow from his domestic relations and from his membership in society carry with them duties which are as inherent as the rights themselves. Man would be a one-sided and unsymmetrical were right alone and not likewise duty written in his constitution, and it would be impossible for him to be assimilated into a social order.

Because government compels these duties does it thereby take away his rights? By no means, it establishes them, for

the authority which commands his duty to others compels at the same time the duty of all others to him. It increase the sum of my good when for my agreement to perform my obligations to others I receive in return the agreement of all others to perform their obligations to me.

A satisfactory state of society could not long be supported without civil restraint. The inevitable dissensions and strifes which would be engendered by the free, unrestricted and unregulated conduct of men, each acting as an independent individual without regard or concern for others, compels the institution of government. The universal fact that where civilization exists there also is found government is evidence that to the necessity for such regulation written in our constitution and not to accident or to the designs of would be rulers may be attributed the real fundamental reason for its existence. This necessity likewise accounts for the long-suffering endurance of despotism, mankind instinctively feeling that any government is better than none at all.

It is a self evident proposition that so long as human

society is constituted as it is, the perfection and happiness of men cannot be approximated, much less attained, without civil government. By it we have order, peace, security, liberty, opportunity, happiness. It accords to all men equally the unqualified right to life, liberty and the pursuit of happiness. It accomplishes a "pure, wise and equal administration of the laws, the first end and blessing of social union".

These observations have been made solely with regard to the interests of the individual within the State, but this is not the only advantage of and we may say necessity for government.

We must take an outlook as well as an inlook, an external as well as an internal view. We must consider our relations as a State with other States. States are to States in the world as individuals are to individuals in societies. We have international relations, rights and duties as well as

individual relations, rights and obligations.

In order that a State may have dealing with and be dealt with by other States it must be organized in government. It must have a head - a duly constituted authority to represent it, to speak and act for it, to make demands on other States, and consider the demands of other States upon it, to claim rights, to perform obligations, in brief, to embody the brains, intelligence, moral sense and responsibility of the public person, having well defined rights and duties, with the whole world for their operation.

Without a government a people would have no importance or dignity as a nation in the eyes of the world. There would be neither National Credit nor power available necessary to withstand the enemies of the State without and within.

As a foundation for a free government there must be a constitution in fact. The political organization, an important and essential ingredient in the State, is the Constitu-

tion. Like an ordinary contract, it may be written or unwritten. When unwritten it may be difficult to prove its provisions, when written it speaks for itself. Political organization indicates that a process of evolution has operated in the development of the State, that the multitude has become the community and that the mass has assumed form, parts, relation and function. A free government presupposes a constitution. It must be constituted in order to exist.

The constitution determines or provides the frame of government. Its creation is a supreme act of Sovereignty and the same power that makes it can alter or abolish it.

In a republican form of government the constitution expresses the immediate and direct will of the people. It is the only field of governmental operation in which the people act directly and which entirely justifies the use of the phrase "Government by the people".

Second only to the constitution in authority and importance are legislative enactments, which must be in harmony with the will of the people as expressed in the constitution,

though for that matter, to be effective, they must be in harmony with the will of the people whether expressed in the constitution or not. In the making of the laws the people act by representation, but in giving the sanction without which a law is a dead letter, they act directly.

Under our constitution the legislature, so long as it acts within the scope of its duly constituted powers, is superior to both the Executive and Judicial departments. It may make a law which both must observe. The only defense which either can interpose is that in enacting it the legislature exceeded its power and therefore its act is unconstitutional and therefore void.

The Judicial department determines this question and in this respect alone is superior to the legislature.

The Legislative, Executive and Judicial departments are co-ordinate but not co-equal, as we have seen. They act, however, independently, each in its proper sphere.

Government and law are inseparable. No contemplation of the one can be complete without the other. Laws cannot execute themselves, no less can government be carried on without rules for its operation. The laws furnish these rules and government furnishes the machinery for the execution of the law.

In a democracy the laws themselves may be said to govern. Public officials are merely servants to execute their commands. Their oath of office is, in brief, to support the constitution and the laws. These are the authority for all their legitimate acts.

In a constitutional monarchy a King may rule, but his acts must comport with the requirements of the constitution and be within the limits of his constitutional powers. Such a King, however, is more a chief magistrate than a monarch.

Even in an absolute monarchy it is inconceivable that a rule could be carried on with an utter absence of law and indeed the testimony of history is that it never has been in any community at all civilized.

Law marks the advance from confusion to order, from savagery to civilization, and law suggests government.

In the ancient kingdom of the Medes and Persians, a monarchy as absolute as could be imagined, the King's decrees were called laws and in such respect were they held that even the King himself felt powerless to change them once they were promulgated.

On one occasion, thro the misrepresentations of Haman, the King, Ahasuerus, was induced to sign a decree ordering the destruction of all the Jews. He afterwards was informed of Haman's plot, ordered his execution, and desiring to save the Jews and deeming it impossible to change a law, he issued another decree authorizing the Jews on the day appointed for their destruction "to gather themselves together and to stand for their life, to destroy, to slay and to cause to perish all the power of the people and province that would assault them, their little ones and women and to take the spoil of them for a prey".

Thus we see that in very ancient times, long before the people, much less the King, had any question as to the

latter's right to rule absolutely, the inherent necessities of the case compelled the use of laws and respect for and observance of them even by the monarch who had himself made them.

The ultimate origin of government is God. Reason and revelation both alike teach us that there is a great First Cause, an unconditioned and allconditioning Being who has existed eternally and whose "years shall have no end".

Before the visible universe, before the existence of any other being, One and One Only was God. There was no material, hence no place, there was no event, hence no time. In eventless space there can be neither time nor place.

This is the realm of the Infinite and beyond the comprehension of the finite. No demonstrative proof is possible. It is idle to argue concerning it. The simple statement must

suffice. These truths are confirmed to us by our intuitions. Our mind, itself a breath of the Infinite, is the one only earthly of all God's creations that apprehends him.

Originally God was alone, Almighty, Eternal, Infinite, willing in himself that which he pleased to be, good without qualification, free without condition, perfect in all his attributes, wise beyond conception, truth not only personified, but deified; unrelated to being or thing, seeing that neither existed.

Then occurred the first and greatest event - the first creation, the only begotten Son, one in kind and substance with the Father, heir of all things and through whom the worlds were made in the great (to us) "Beginning".

With the creation of the Son and through Him of the worlds, began relation and the regulator of relation - law. This was the first occasion for law and its beginning.

God created, and by the same act constituted the law which should govern his creation. He is no less the author of law than the creator of all things. It is sometimes said

that God himself is subject to law. This cannot be. A sovereign is supreme. He cannot condition himself else he is no sovereign. The maker of a thing cannot be subject to it. God knows no authority but his own will. He is governed by neither law, precedent nor necessity. He is free to act his own pleasure and if he pleases to suspend or annul ordinary operation, He is not thereby inconsistent with himself. He has never abdicated his authority in any degree. "He cannot deny himself". He was, is and ever will be the Sovereign of the universe, the King of kings and Lord of lords. I AM THAT I AM was God's description and identification of himself to Moses.

God's government is perfect. Almighty power, exact justice and boundless benevolence blend in Him. A sceptre of righteousness is the sceptre of his Kingdom.

The divine order is the true order. Heavenly things are the pattern for the earthly. As are the conditions of

the Heavenly, so should be also the conditions of the earthly, and by so much as the earthly approach the heavenly, by so much will conditions here be satisfying.

In heaven perfection reigns supreme. Perfect laws and perfect administration. Peace and security universal. But one good, the general good, but one will, goodwill. Perfect obedience to a perfect law, perfect loyalty to a perfect King.

Great has been the progress in the science of government since history began, and although it is not yet perfect and though there are still many unsolved problems, it need not blind our eyes and shut out from our view the manifest hand of Providence in it all, and the devout soul may gratefully exclaim with Samuel of old, "Hitherto hath the Lord helped us".

As before one's vision come glimpses of the Infinite, as one faintly begins to apprehend the oneness, the allness and the perfection of God, as one begins to appreciate the

immutability, the universality and the majesty of the law which governs a universe in perfect harmony, as one begins to realize the perfect appointments, the immensity, the complexity and the diversity of that universe, there is borne in upon the soul the thought of purpose, plan and end and the conviction that all we see is part of a divine order and that out of it all and in God's own good time will emerge a perfect humanity and a perfect day.

"One God, one law, one element and one far off divine event to which the whole creation moves".

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